ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
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SUSAN BITTER SMITH

IN THE MATTER OF THE REVIEW AND POSSIBLE REVISION OF ARIZONA UNIVERSAL SERVICE FUND RULES, ARTICLE 12 OF THE ARIZONA ADMINISTRATIVE CODE.	DOCKET NO. RT-00000H-97-0137
IN THE MATTER OF THE INVESTIGATION OF THE COST OF TELECOMMUNICATIONS ACCESS.	DOCKET NO. T-00000D-00-0672

PROCEDURAL ORDER

BY THE COMMISSION:

The Arizona Corporation Commission ("Commission") convened a hearing in these consolidated dockets on March 16, 2010.[1] Post-hearing briefing concluded in September 2010. However, before the Commission could deliberate and act on a Recommended Opinion and Order, the Federal Communications Commission ("FCC") issued its *USF/ICC Transformation Order*[2] on November 15, 2011. In that order, the FCC ordered carriers to reduce their intrastate terminating access charges to their interstate access charge level, established a timeline for eliminating terminating access charges altogether, and implemented an end user charge, called an Access Recovery Charge ("ARC"), to replace some of the lost revenues from lower access charges.

[1] The hearing addressed access charge reform and possible revisions to the Arizona Universal Service Fund ("AUSF") Rules, and elicited diverse recommendations on such topics as which carriers should be affected by access charge reform, to what level should access charges be reduced and how quickly, and whether the AUSF should be expanded to provide support for lost access charge revenue. Hearing participants included: Qwest Corporation and Qwest Communications Company LLC ("Qwest"), Sprint Communications Company LP, Sprint Spectrum, LP and Nextel West Corp. (collectively "Sprint"), Eschelon Telecom of Arizona, Inc., Mountain Telecommunications, Inc., and Electric Lightwave, LLC (collectively referred to as "Integra"); Cox Arizona Telcom, LLC ("Cox"); the Arizona Local Exchange Carriers Association ("ALECA"); AT&T Communications of the Mountain States, Inc. and TCG Phoenix ("AT&T"); the Residential Utility Consumer Office ("RUCO"); Verizon Business Services and Verizon Long Distance ("Verizon"); and the Commission's Utilities Division ("Staff"). XO Communications ("XO") and tw telecom of Arizona LLC ("tw telecom") participated in the dockets but did not appear at the hearing.

[2] *See Connect America Fund et al*, WC Dkt No. 10-90 et al, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov 18, 2011)("*USF/ICC Transformation Order*").

Following a Procedural Conference on February 6, 2012, the Commission solicited recommendations from the parties to this proceeding about the continued relevance of these dockets in light of the FCC's *USF/ICC Transformation Order*.[3] Comments were filed by Qwest, Sprint, Integra, Cox, tw telecom, ALECA, AT&T and Staff.[4]

There is consensus that the FCC's *USF/ICC Transformation Order* made further Commission action on most of the issues addressed in these dockets unnecessary at this time. However, there are several issues addressed in these dockets that the FCC's *USF/ICC Transformation Order* did not affect--namely the administration of the Lifeline and Link Up programs; the method for determining contributions to the AUSF; and originating access charge reform.

The *USF/ICC Transformation Order* is on appeal before the Tenth Circuit, and the court did not stay the provisions of the Order while on appeal. The Commission has joined in the appeal.[5] Carriers have filed tariffs in Arizona to comply with the FCC rules, and the Commission adjudicated rate adjustments for affected carriers.[6]

Lifeline and Link-up

During the hearing in this matter, the Commission was asked to consider adopting the recommendations of the Arizona Eligible Telecommunications Carriers ("ETCs") contained in a Report and Recommendations on Lifeline and Link-Up Issues ("Industry Report") docketed on December 21, 2005.[7] The Industry Report proposed automatic enrollment in Lifeline and Link-Up to be administered by the Arizona Department of Economic Security Community Services Administration ("DES-CSA") and DES-Family Assistance Administration ("DES-FAA"), and to modify the applications for Food Stamps and Arizona Health Care Cost Containment System to

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[3] *See* Procedural Orders dated February 6, 2012 and March 20, 2012.

[4] Qwest, Sprint, Integra, Cox, ALECA; and AT&T filed Initial Comments On May 15, 2012. The same date, Staff requested an extension of time until June 15, 2012, to file its Comments due to staffing issues. By Procedural Order dated May 16, 2012, the schedule for filing Staff's Comments and Responsive Comments for all other parties was modified. On June 15, 2012, AT&T, ALECA, Sprint, Qwest, and tw telecom filed Responsive Comments and Staff filed its Comments and recommendations. On July 2, 2012, AT&T and Qwest filed additional Reply Comments.

[5] Feb. 6, 2012 Procedural Conference Transcript at 18.

[6] *See* Decision No. 73874 (May 8, 2013)(Southwestern Telephone Co.); Decision No. 73875 (May 8, 2013) (Table Top Telephone Co. Inc.); Decision No. 73871 (May 8, 2013) (Copper Valley Telephone, Inc.); Decision No. 73872 (May 8, 2013) (Valley Telephone Cooperative, Inc.); and Decision No. 73873 (May 8, 2013) (Arizona Telephone Co.).

[7] *In the Matter of Adopting Expanded Eligibility Criteria for Lifeline and Link-Up and Certification, Verification and Recordkeeping Requirements*, Docket No. T-00000A-05-0380.

include a specific question about Arizona Lifeline.[8] According to the Industry Report, information from the new enrollees would be captured by DES-FAA caseworkers and electronically transmitted to the ETC identified by the applicant.[9] The Industry Report estimated that with automatic enrollment, as many as 400,000 new households could be enrolled in Arizona Lifeline over the course of a year, which could result in an increase of over $38 million in federal funding.[10] The Industry Report estimated the initial start-up costs of Phase I to be approximately $27,558 and the ongoing administrative costs of automatic enrollment for all ETCs to be at least $325,000 per year.[11]

Funding Lifeline administrative costs via the Arizona Universal Service Fund ("AUSF") was the preferred option of the ETCs in the Industry Report. [12] The Industry Report concluded that AUSF surcharges would be a fair and economical way to cover the administrative costs as both the wireline and wireless subscribers benefit by adding more customers to the public switched network and keeping existing customers on the network.[13] During the hearing, ALECA and Qwest recommended that the AUSF be expanded to assume the costs of administering the Lifeline and Link-Up programs in Arizona.[14]

Staff recommended that the Arizona ETCs be authorized to implement the Industry Report, but that the administrative costs not be recovered from the AUSF.[15] Staff argued that the costs of administration should continue to be covered by the individual carriers, believing that the additional revenues received by the ETCs in conjunction with the new customers should be more than sufficient to cover the costs of administration.[16] Verizon also recommended that the Commission reject proposals to expand the AUSF to fund the administration of Lifeline and Link-Up programs for lack of a nexus between the purpose of the AUSF and Lifeline and Link Up.[17]

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[8] Industry Report at 3.
[9] Industry Report at 3.
[10] Industry Report at 3.
[11] Industry Report at 9.
[12] Industry Report at 9.
[13] Industry Report at 9.
[14] ALECA Reply Brief at 12; Ex Qwest-7 Copeland Dir at 9.
[15] Staff Reply Brief at 4.
[16] Ex Staff-1 Shand Dir at 26.
[17] Verizon Initial Brief at 79.

On January 31, 2012, (after the hearing in these dockets), the FCC approved a comprehensive overhaul of its Lifeline and Link Up programs.[18] In its *Lifeline Reform Order* the FCC states that it is trying to strengthen protections against waste, fraud and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization for broadband; and constrain growth of the program's budget.[19] The *Lifeline Reform Order* establishes national eligibility criteria based on either income or participation in certain government benefit programs, and adopts rules for enhanced initial and annual certification.[20] To eliminate waste, fraud and abuse, the FCC created a Lifeline Accountability Database to prevent multiple carriers receiving support for the same subscribers.[21] The FCC also eliminated Link Up support except on Tribal Lands.

The FCC found that establishing a fully automated means for verifying consumers' initial and ongoing Lifeline eligibility from governmental data sources would both improve the accuracy of eligibility determinations, ensuring that only eligible consumers receive Lifeline benefits, and reduce burdens on consumers as well as the ETCs.[22] The FCC set a goal of the end of 2013 for an automated means to determine Lifeline eligibility for the three most common programs through which consumers qualify for Lifeline.[23] The FCC amended its rules to require all ETCs prior to enrolling a new subscriber in Lifeline, to access state or federal social services eligibility databases, where available, to determine eligibility. The FCC allows a state agency or third-party administrator to query the database in lieu of the ETC doing so.[24] The FCC encourages ETCs to provide consumers with multiple options for presenting documentation for eligibility, including in-person and by mail,

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[18] *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Lifeline and Link Up*, WC Docket No. 03-109; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training,* WC Docket No. 12-23; *Report and Order and Further Notice of Proposed Rulemaking*, FCC 12-11, released Feb. 6, 2012 ("*Lifeline Reform Order*").

[19] *Lifeline Reform Order* at ¶ 1.

[20] *Lifeline Reform Order* at ¶ 4.

[21] *Lifeline Reform Order* at ¶ 4.

[22] *Lifeline Reform Order* at ¶ 97.

[23] Most consumers qualify for Lifeline through Medicaid, SNAP, and Social Security. *Lifeline Reform Order* at fn 264.

[24] *Lifeline Reform Order* at ¶ 98. In states where ETCs are responsible for establishing eligibility (no state administrator or state agency making determination) and there is no automated means for ETCs to check electronic databases for eligibility, an ETC must review documentation to determine eligibility for new subscribers until such time as a qualifying eligibility database in available. *Lifeline Reform Order* at ¶ 99.

and specifically recognizes that state agencies and non-profit organizations may be able to assist low-income consumers transmit documentation to their chosen ETC.[25]

In response to the Commission's request for comments after the release of the FCC's Orders, some parties updated their recommendations concerning Lifeline and Linkup. Sprint did not object to centralized administration of Lifeline and Link Up, and supported using databases to verify applicant eligibility, but also expressed concerns with automatic enrollment given the FCC's pronouncements in the *Lifeline Reform Order*.[26] Cox believed that no action was needed at this time related to the centralized administration and automatic enrollment of Lifeline and Link-Up service, as the FCC was clear in its *Lifeline Reform Order* that it did not support nor recommend automatic enrollment of Lifeline customers. Cox noted that the FCC was seeking additional comments on Lifeline reform, and Cox believed continued federal reform would streamline and simplify the program in ways that will maximize competition, reduce costs and ultimately benefit consumers.[27] ALECA supported centralized administration of low-income programs, but recommended that Arizona coordinate its efforts with the FCC's action to ensure the most efficient administration of the programs.[28] Staff continued to recommend that Arizona ETCs implement the recommendations contained in the Industry Report, except that the costs of implementing the recommendations should not be recoverable through an AUSF surcharge.[29]

Although the *Lifeline Reform Order* does not appear to prevent centralized administration or third party administrators, and some parties believed that there was no reason not to adopt the Industry Report, the assumptions contained in the Industry Report are outdated. Furthermore, it is unclear how the assumptions and recommendations of the Industry Report comport with subsequently-released FCC Orders affecting Lifeline and Link Up. The FCC is promoting the development of national databases to help determine eligibility and prevent fraud, with an implementation target of year-end 2013. With the new centralized databases, the need for DES-FAA

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[25] *Lifeline Reform Order* at ¶ 107.
[26] Sprint May 15 2012, Comments at 10.
[27] *Cox May 15, 2012 Comments at 4.*
[28] ALECA May 15, 2012 Comments at 3.
[29] Staff's June 15, 2012 Comments at 3.

administration may not be necessary. At a minimum the merits of automatic enrollment and the costs of DES-FAA involvement as recommended in the Industry Report require re-examination.

The record is not adequately developed to determine the continued validity of the Industry Report's assumptions or its compatibility with FCC orders. At this point, ETCs should be moving toward compliance with the FCC's Lifeline Rules. Consequently, unless and until a party demonstrates good reason why the Commission should take action on the Industry Report in these dockets, no further action on this topic will be taken.

Originating Access

In their 2012 post-*USF/ICC Transformation Order* Comments, Cox, tw telecom, ALECA, Qwest, Sprint and Staff recommended that the Commission suspend or hold these dockets in abeyance with respect to additional access charge reform until jurisdiction issues are sorted out at the Tenth Circuit Court of Appeals, or until an interested party demonstrates a need for Commission action prior to that time.[30] They noted that while the FCC's order did not address all access charge rate elements that were addressed in these dockets (e.g. originating access charges), the FCC is looking at originating access as part of a Further Notice of Proposed Rulemaking ("FNPRM").

AT&T, however, argued that there is nothing in the FCC's *USF/ICC Transformation Order* that prevents the Commission from taking immediate action on originating access charge reform, and argued that the record was clear that access reform will benefit consumers.[31] AT&T recommended that after the review and implementation of the terminating access reductions are complete, the Commission should solicit comments from the parties on their proposals for originating access reforms.[32]

The most prudent position at this point is to suspend further action in these dockets with respect to additional access rate element reform. The reform process is proceeding at the federal level and jurisdictional issues are being decided by the federal court. Arizona action on additional reforms at this time would add confusion and impose an unnecessary burden on the parties.

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[30] Cox May 15, 2012 Comments at 2; tw telecom June 15, 2012, Responsive Comments at 1-2; Sprint May 15, 2012, Comments at 11; ALECE June 15, 2012 Reply Comments at 1; Qwest July 2, 2012 Reply Comments; Sprint May 15, 2012 Comments at 4; and Staff June 15, 2012 Comments at 1-2.

[31] AT&T May 15, 2012 Comments at 2.

[32] AT&T Further Reply Comments at 6-7.

AUSF Reform

The Commission established the AUSF in 1989, in order to "maintain statewide average rates and the availability of basic telephone service to the greatest extent reasonably possible."[33] Under the AUSF Rules, the amount of AUSF support a carrier can receive is based on the difference between the benchmark rates for local exchange service and the appropriate cost to provide basic local exchange service as determined by the Commission, net of any universal service support from federal sources.[34]

Under Arizona's existing AUSF Rules, one half of the funding requirement is collected through a surcharge paid by providers of basic local exchange service, wireless service, paging service and other Commercial Mobile Radio Services ("CMRS") that interconnect with the public switched network based on access lines and interconnecting trucks.[35] The second half of the AUSF is collected from providers of intrastate toll service based on a percentage of Arizona intrastate toll revenue.[36]

In this proceeding AT&T and ALECA supported using the AUSF to replace lost access revenues for the Rural Local Exchange Carriers ("RLECs"). ALECA proposed to amend the AUSF Rules to explicitly allow high cost loop support and to allow revenue neutral access reform support.[37] AT&T proposed that the AUSF be comprised of two separate support funds: the AUSF High Cost Support Fund, to be calculated as it is currently under A.A.C. R14-2-1202, and the "AUSF Access Revenue Replacement Support Fund," under a new A.A.C. R14-2-1202(A). AT&T proposed that after being allowed to "rebalance" local rates to a reasonable benchmark, Incumbent LECs ("ILECs") should be allowed to recover lost access revenues from the AUSF to cushion the transition.[38]

Staff, Sprint and Verizon believed that expanding the role of the AUSF was not necessary or in the public interest. Qwest and RUCO were wary about expanding the role of the AUSF. RUCO

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[33] Decision No. 56639 (September 22, 1989); Decision No. 70659 (December 22, 2008); *see also* Decision No. 63267 (December 15, 2000).
[34] A.A.C. R14-2-1202.
[35] A.A.C. R14-2-1204.B.
[36] A.A.C. R14-2-1204.C.
[37] ALECA's proposed Rule language is attached to Ex ALECA-1 Meredith Dir as Exhibit DDM-02.
[38] AT&T Post-Hearing Brief at 30. AT&T's proposed Rules changes are attached to its Post-Hearing Brief and as Exhibit C to Ex AT&T-9 Oyefusi Reply.

believed that a revenue neutral recovery from AUSF, without examining costs or cost allocation, would promote inefficiency,[39] and Qwest recommended that a LEC should have to show that it is recovering revenues from its own end users up to a benchmark, and demonstrate need prior to drawing from an expanded AUSF.[40] The Competitive LECs ("CLECs") argued that the AUSF should not be a replacement for lost access revenues, but should provide high cost and low income support. They also recommended that before a carrier is allowed to draw from the AUSF, it should be required to demonstrate need. Sprint and Verizon argued that carriers have significant capacity to increase other rates to collect their network costs from their own customers if afforded pricing flexibility.[41] Staff thought that any rule changes to broaden the scope of the AUSF (e.g., changes to the rules for high cost loop support or to replace access revenues) should be considered after the FCC completes its revisions to the federal funding mechanisms.

In the *USF/ICC Transformation Order*, the FCC completely revamped how universal service is considered and supported on a going-forward basis at the federal level. None of the parties to these dockets had the benefit of the new federal rules during the hearing. There is not sufficient evidence in the record to support expanding the role of the AUSF to provide support for lost access revenues. The full impact of the FCC's order to reduce terminating access and the partial recovery through an ARC is not known, and the need for additional support from the AUSF is uncertain. Consequently, unless and until a party provides good cause for taking further action in these dockets on revising the AUSF Rules to include replacement of access charge revenue, no further action will be taken in these dockets.

However, the record in this proceeding supports revisions to the AUSF Rules to more fairly calculate assessments to support the AUSF. Staff, Qwest and AT&T recommended revising the AUSF Rules in order to be more competitively and technologically neutral. They recommended that the AUSF surcharges be assessed on jurisdictional retail revenues, rather than the current methodology which assesses the AUSF surcharge on a combination of intrastate long distance

[39] RUCO Reply Brief at 13-14.
[40] Qwest Initial Brief at 4.
[41] Sprint Initial Brief at 27-28; Verizon Initial Brief at 51.

revenues and interconnection trunks.[42] In order to be non-discriminatory and competitively and technologically neutral, it was argued that the Rules should require all carriers (wireline, wireless and cable telephone) operating and offering intrastate telecommunications services in Arizona to contribute to the fund based on intrastate revenues.[43] There was no opposition to the concepts expressed in these proposals.

There appears to be consensus that the AUSF Rules should be revised such that assessments are computed based on in-state telecommunications revenues, including all types of carriers (landline, wireless, VoIP, etc.). Further, traditional landline service is probably not the only service that warrants support if all providers, and their end users, are going to contribute to the AUSF. The Commission should consider whether to expand the group of carriers that are eligible to receive AUSF funds. In order to update the AUSF Rules to comport with technological and competitive changes, Staff should open a new rulemaking docket. Because portions of the federal universal service program may be uncertain as a result of pending appeals of FCC Rules, the timing of a new rulemaking docket should be left to Staff's discretion, however, it does not appear that modernizing the methodology for determining carrier assessments to the AUSF is contingent upon the outcome of the appeal of the *USF/ICC Transformation Order*.

IT IS THEREFORE ORDERED that if any party seeks to have Commission take further action on the Industry Report, it should file a request, and absent such request, no further action concerning the Industry Report shall be taken.

IT IS FURTHER ORDERED that these dockets shall remain suspended with respect to access charge reform and expanding the AUSF to include access revenue replacement, unless and until a request to reactivate these subjects is received and determined to be in the public interest.

IT IS FURTHER ORDERED that Staff should open a rulemaking docket to address revisions to the AUSF Rules in order to make funding more competitively neutral and to ensure the Arizona Rules are compatible with federal rules, the timing of such actions to be left to Staff's discretion.

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[42] Staff Initial Brief at 18; Ex Q-7 Copeland Dir. at 8-9; AT&T Post-Hearing Brief at Ex 1.
[43] Ex Q-7 Copeland Dir. at 8-9.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 30th day of August, 2013.

Jane L. Rodda
JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

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